In the High Court of Punjab and Haryana at Chandigarh

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ITA No.7 of 2002

Date of decision: 1.12.2006

M/s The Budhewal Cooperative Sugar Mills Ltd., Ludhiana Appellant

Versus

Commissioner of Income Tax, Ludhiana and another .Respondents

Coram: **Hon'ble Mr.Justice Adarsh Kumar Goel**
Hon'ble Mr.Justice Rajesh Bindal

Present: Mr.M.L.Sharma,Advocate
for the Assessee
Mr.S.K.Garg Narwana,Advocate
for the revenue.

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ORDER:

This appeal has been preferred by the assessee against the order dated 27.4.2000 of Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh in I.T.A.No.1935 of 1992 in respect of the assessment year 1991-92.

The assessee filed its return of income tax for the assessment year in question declaring loss of Rs.26,58,582/-. While processing the return under Section 143(I)(a) of the Income Tax Act,1961(for short 'the Act'), an adjustment of Rs. 20,66,107/- was made as the assessee was found to be not entitled to deduction under Section 80-P of the Act. As a result of the adjustment, the loss was reduced to Rs.5,92,475/-, resultantly, additional tax of Rs.1,61,086/- was levied on the appellant under Section 143(1A) of the Act. In appeal by the assessee, the Commissioner of Income Tax (Appeals), (for short 'the CIT (A)') deleted the demand of additional tax. However, in further appeal before the Tribunal by the revenue, the order of CIT (A) was set aside and levy of additional tax under Section 143(1A) of the Act was upheld. It is against this order that the assessee is in appeal before this Court.

Learned counsel for the assessee submitted that though six substantial questions of law have been framed, substantial question No.(ii) in

para 17 of the memo. of appeal, arises for consideration, which is as under:-

> "(ii) Whether in the facts and circumstances of the case, the order of the Appellate Tribunal upholding the imposition of additional tax at Rs.1,61,086/- especially when there is a loss as per the return filed, also as per the order of assessment, no tax is payable as per assessment order and hence is legally sustainable ?

It is not disputed that the question raised by the assessee has already been gone into by this Court in ITR No. 321 of 1995, CIT, Patiala v. M/s Swaraj Mazda Limited, Chandigarh, decided on 27.11.2006, wherein it was held that even where after processing of return under Section 143(I)(a) of the Act, resultant effect was mere reduction of loss, still the assessee would be liable to pay additional tax under Section 143(1A) of the Act. Accordingly, for the reasons stated therein, the question referred to above is answered against the assessee and in favour of the revenue.

However, the contention of the learned counsel for the appellant to the effect that in regular assessment under Section 143(3) of the Act, the disallowance made, while processing the return, were deleted, which will affect levy of additional tax under Section 143(I-A) of the Act. Even this aspect of the matter has also been gone into in the judgment of this Court in Swaraj Mazda's case (supra), wherein referring to a circular of the Board, it has been held that in case, on facts the assessee is entitled to the relief as per the circular of the Board, it would be entitled to the same.

The appeal is disposed of in the manner indicated above.

(Adarsh Kumar Goel)
Judge

December 1,2006
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(Rajesh Bindal)
Judge